

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**ELECTRONICALLY FILED**

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UNITED STATES OF AMERICA,

Plaintiff,

Case No.: 08 CIV 7194(SHS)

-against-

**ANSWER**

CVP I, LLC, DOWNTOWN MANHATTAN  
RESIDENTIAL LLC, CHRYSTIE VENTURE  
PARTNERS, LLC, AVALON BAY  
COMMUNITIES, INC., and SLCE ARCHITECTS LLP,

Defendants.  
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Defendant SLCE ARCHITECTS, LLP ("SLCE"), by its attorneys Milber Makris  
Plousadis & Seiden, LLP, as and for its answer to the Complaint alleges as follows upon  
information and belief:

1. SLCE denies any and all allegations as set forth in paragraph "1" of the Complaint.
2. SLCE denies any and all allegations as set forth in paragraph "2" of the Complaint,  
respectfully referring all questions of law to the Court for decision at the time of trial.
3. SLCE denies any and all allegations as set forth in paragraph "3" of the Complaint,  
respectfully referring all questions of law to the Court for decision at the time of trial.
4. SLCE denies having knowledge or information sufficient to form a belief as to the  
truth of the allegations set forth in paragraph "4" of the Complaint.
5. SLCE denies any and all allegations as set forth in paragraph "5" of the Complaint,  
respectfully referring all questions of law to the Court for decision at the time of trial.
6. SLCE denies any and all allegations as set forth in paragraph "6" of the Complaint,  
respectfully referring all questions of law to the Court for decision at the time of trial.

7. SLCE denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint.

8. SLCE denies any and all allegations as set forth in paragraph “8” of the Complaint, except admits that SLCE is an active limited liability partnership with an office in the City of New York, State of New York and that SLCE entered into an agreement and respectfully refers the Court to the agreement for its terms and conditions.

9. SLCE denies any and all allegations as set forth in paragraph “9” of the Complaint.

10. In response to paragraph “10” of the Complaint, SLCE repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “9,” inclusive, of the Complaint with the same force and effect as though the same were set forth at length herein.

11. SLCE denies any and all allegations as set forth in paragraph “11” of the Complaint.

12. SLCE denies any and all allegations as set forth in paragraph “12” of the Complaint.

13. SLCE denies any and all allegations as set forth in paragraph “13” of the Complaint.

14. SLCE denies any and all allegations as set forth in paragraph “14” of the Complaint.

15. SLCE denies any and all allegations as set forth in paragraph “15” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

16. Plaintiff has failed to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

17. Plaintiff’s claims are barred by any applicable statutes of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

18. Defendant SLCE has been improperly joined as defendant in this action as they neither own, control and/or manage the subject Property.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

19. The Fair Housing Amendments Act of 1988 is unconstitutional, as it pertains to the design and construction of multi-family dwelling units (42 U.S.C. §3604(f)(3)(C)), as these provisions are vague, ambiguous and illusory, and do not contain sufficient construction guidelines and minimum design requirements to allow reasonable compliance thereto by builders, contractors, owners and design professionals of multifamily dwelling units.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

20. Plaintiff's claims are barred as the subject Property was built in compliance with state and local building codes, and in reliance upon assurances of compliance from state and local building officials.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

21. Any imposition of a civil penalty against defendant SLCE would be unwarranted, unreasonable under the circumstances, and not authorized by law.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

22. Plaintiff's claims are barred by the doctrine of laches.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

23. Plaintiff's claims are barred by the doctrines of acquiescence, waiver and/or estoppels.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

24. Plaintiff's efforts at enforcement of the Fair Housing Act against defendant SLCE is arbitrary and discriminatory, and subject to no specific standard of which defendant SLCE could reasonably be aware at the time of design.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

25. Defendant SLCE at all times exercised the skill, reasonable care and diligence usually exercised by architects in the relevant community.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

26. Plaintiff may not have standing to bring this claim under 42 U.S.C.S. §3613 as it cannot meet the constitutional standing requirements: (1) injury in fact; (2) traceability; and (3) redressability. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 102 S. Ct. 752, 758, 70 L. Ed. 2<sup>nd</sup> 700 (1982).

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

27. Defendant SLCE is not a proper party under the Fair Housing Act.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

28. Defendant SLCE acted in compliance with all statutory requirements to which it is required to adhere.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

29. Plaintiff's claims are barred to the extent that discrimination as defined by the statutes referenced in Plaintiff's complaint must be intentional and cannot be accidental or incidental.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

30. Plaintiff's claims are barred to the extent that Plaintiff has failed to set out a specific pattern and practice of discrimination.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

31. Pursuant to 42 U.S.C. §3608(e), the Plaintiff, United States of America, and its agent, the Secretary of Housing and Urban Development had certain affirmative duties to ensure

compliance with the Fair Housing Act, including but not limited to cooperating with and rendering technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions and administering the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the Act.

Plaintiff did not take the appropriate affirmative steps necessary to ensure that builders, contractors, architects, and others in New York City knew the appropriate remedies and design plans necessary to comply with the Fair Housing Act. Since Plaintiff did not adequately render its affirmative duties to inform Defendants about these requirements, Defendants are not accountable for any alleged negligent breach of these requirements.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

32. The subject Property was built in compliance with New York Local Law 58 of 1987 and compliance with Local Law 58 of 1987 satisfies the requirements of both the Fair Housing Act and the associated regulations created by the Department of Housing and Urban Development.

SLCE reserves the right to include additional affirmative defenses of which it becomes aware through discovery and otherwise.

WHEREFORE, Defendant SLCE, having fully answered the Complaint, pray that the Court:

1. Dismiss the Complaint with prejudice;
2. Enter Judgment in favor of SLCE and an Order that the United States shall recover nothing;
3. Declare that the Fair Housing Accessibility Guidelines (56 Fed. Reg. 9497) are merely technical guidance and do not constitute binding legal requirements under the Fair Housing Act;

4. Declare that the provisions contained in the “Fair Housing Act Design Manual” of the United States (Department of Housing and Urban Development), issued August 1996 and Revised April 1998, are merely technical guidance and do not constitute binding legal requirements under the Fair Housing Act;

5. Award defendant SLCE the costs incurred to defend the Complaint including reasonable attorney’s fees; and,

6. Award such other and further relief as the Court deems appropriate.

Dated: White Plains, New York  
May 11, 2009

**MILBER MAKRIS PLOUSADIS  
& SEIDEN, LLP**

By:                     /s/                      
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